

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

PRECY SMITH,)
Plaintiff,)
v.)
CITY OF KANSAS CITY, MISSOURI,)
et. al.)
Defendant.)
Case No. 4:19-CV-00405-FJG

**DEFENDANT CITY OF KANSAS CITY'S
MOTION TO QUASH PURPORTED SERVICE OF PROCESS**

COMES NOW Defendant City of Kansas City, Missouri (hereinafter "City") by and through its attorney of record, by a limited and special appearance, pursuant to Federal Rule of Civil Procedure 4(j), and moves this Court for an order quashing the purported service of process on November 27, 2019, by Plaintiff Precy Smith. In support of its motion, Defendant City offers the following suggestions:

1. On November 27, 2019, Laurie Abbott, an Executive Assistant for the Department of Human Resources in the City of Kansas City, Missouri, received an envelope via United States Postal Service addressed to the twelfth floor of City Hall. (See Ex. 1, Summons and Ex. 2 ¶¶ 2 & 4, Declaration of Laurie Abbott).
2. The Department of Human Resources is located on the twelfth floor of City Hall. (Ex. 2 ¶ 3).
3. Laurie Abbott opened the envelope and found a summons for case no. 4:19-CV-00405-001. (Ex. 2 ¶ 4).
4. The summons was the only document or item in the envelope; there was no copy of the complaint. (Ex. 2 ¶ 5).

5. Federal Rule of Civil Procedure 4(j)(2) states that service upon a municipal corporation must be served by either “delivering a copy of the summons *and* of the complaint to its chief executive officer” or by “serving a copy of each in the manner prescribed by that state’s law for serving a summons or like process on such a defendant.” (emphasis added).
6. Missouri law requires a copy of the summons and petition be served together. Mo. Sup. Ct. Rule 54.04; Mo. Rev. Stat. § 506.150.
7. Additionally, Missouri law requires service of process to be made by a sheriff or any person over the age of 18 who is not a party to the action; Missouri does not allow service by mail for civil actions. Mo. Sup. Ct. R. 54.13(a).
8. Service of process must be directed to “the mayor or city clerk or city attorney in the case of a city . . .” under Missouri law. Mo. Rev. Stat. § 506.150(5).
9. Laurie Abbotts does not have the authority to accept legal service nor has anyone at the City granted her the authority to accept legal service on its behalf. (Ex. 2 ¶ 6).
10. Pursuant to Federal Rule of Civil Procedure 4(j), the summons received by Defendant City on November 27, 2019, should be quashed because it was insufficiently served as there was no copy of the complaint attached as required by both Federal and Missouri law, it was not delivered to a person authorized to accept legal service, and it was not delivered in a manner accepted under Missouri law.

WHEREFORE, Defendant City requests the entry of an order quashing the November 27, 2019, purported service of process.

Respectfully submitted,

OFFICE OF THE CITY ATTORNEY

By: /s/ Emily Carney
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ATTORNEY FOR DEFENDANT
CITY OF KANSAS CITY, MISSOURI

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via ECF this 10th day of December, 2019, and mailed, postage prepaid, to:

Precy Smith
8104 Wayne Ave
Kansas City, MO 64131
Plaintiff pro se

By: /s/ Emily Carney
Emily Carney
Assistant City Attorney